



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0376]

RIN 1625-AA00

Safety Zone; Lower Mississippi River, Mile Marker 219 to
Mile Marker 229, in the Vicinity of Port Allen Lock

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River beginning at mile marker 219 and ending at mile marker 229, extending the entire width of the river, in the vicinity of Port Allen Lock. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with high water. Entry into this zone is prohibited unless vessels have met the specified instructions or specifically authorized by the Captain of the Port, New Orleans or a designated representative.

DATES: This rule will be enforced with actual notice from 12 p.m. on May 5, 2013, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the

Code of Federal Regulations on [INSERT DATE OF PUBLICATION
IN THE FEDERAL REGISTER] until 12 p.m. on June 16, 2013.

ADDRESSES: Documents indicated in this preamble as being
available in the docket are part of docket USCG-2013-0376.
To view documents mentioned in this preamble as being
available in the docket, go to <http://www.regulations.gov>,
type the docket number in "SEARCH" box and click "SEARCH".
Click on Open Docket Folder on the line associated with
this rulemaking. You may also visit the Docket Management
Facility in Room W12-140 on the ground floor of the
Department of Transportation West Building, 1200 New Jersey
Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m.,
Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on
this rule, call or e-mail Lieutenant Christopher Norton,
Coast Guard Marine Safety Unit Baton Rouge; telephone (225)
298-5400, e-mail Christopher.R.Norton@uscg.mil. If you
have questions on viewing the docket, call Barbara
Hairston, Program Manager, Docket Operations, telephone
(202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is necessary to ensure the safe operation of vessels on the river during this period of elevated water levels. The water levels on the Lower Mississippi River in this area have risen very rapidly, creating a faster than normal current that is a hazard to the safe operation of vessels in the area. Publishing an NPRM would be impracticable because it would unnecessarily delay the immediate action needed to protect persons and vessels from the potential safety hazards associated with high water.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. As discussed above, a safety zone is immediately needed to protect the public from hazards associated with flooding caused by the elevated water levels. Therefore, publishing a NPRM and delaying its effective date would be impracticable and contrary to the public interest.

B. Basis and Purpose

The Baton Rouge gauge has reached 33 feet and continues to rise. This elevated water level is creating a faster than usual current in the area of the Lower Mississippi River, therefore the Captain of the Port, New Orleans has implemented a safety zone from mile marker 219 to mile marker 225, Lower Mississippi River (LMR). This safety zone prohibits certain commercial vessels from operating in this area, unless they are in compliance with specific operational directions of the Captain of the Port, New Orleans.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively

authorize the Coast Guard to establish and define regulatory safety zones.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River beginning at mile marker 219 and ending at mile marker 229, extending the entire width of the river, in the vicinity of Port Allen Lock. Commercial vessels are prohibited from entering into this safety zone unless they comply with the following directions of the Captain of the Port, New Orleans: Canal towing companies and tow operators with tows 600 feet in length or greater, excluding the length of the towing vessel, are required to use private assist vessels with a minimum of 1000 horse power when entering and exiting the Port Allen Locks. Tows exiting the Port Allen Locks intending to head northbound shall initially proceed southbound and then top around at or below mile marker 226 prior to heading north. Additionally, the Captain of the Port, New Orleans is recommending a tonnage restriction of 1 horse power per 5 ton or 280 horse power per regulation barge, while empty barges may be calculated at $\frac{1}{2}$ the horse power requirement. Commercial vessels that are not in compliance with the above directions may request

special authorization to enter into or transit through the safety zone from the Captain of the Port, New Orleans.

This rule is effective from 12 p.m. on May 5, 2013, until 12 p.m. on June 16, 2013, unless cancelled earlier by the Captain of the Port, New Orleans. The Captain of the Port, New Orleans may cancel this safety zone in the event the Baton Rouge Gage is reading below 33 feet and falling. The Captain of the Port, New Orleans or a designated representative will inform the public through Broadcast Notice to Mariners of changes in the effective period and enforcement times for the safety zone.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1

of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule will be in effect for a limited time period and notifications to the marine community will be made by local notice to mariners, and subsequent notifications through broadcast notice to mariners. Deviation from the rule may be requested and will be considered on a case-by-case basis by the Captain of the Port, New Orleans or a designated representative. Most vessels will be able to transit through the zone, therefore the impacts on routine navigation are expected to be minimal, and this rule is not a significant regulatory action.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following

entities, some of which may be small entities: the owners or operators of certain commercial vessels intending to transit the Lower Mississippi River between mile marker 219 and mile marker 229. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time, and these commercial vessels may transit freely though the zone if they are operating in compliance with the Captain of the Port, New Orleans' direction. If you are a small business entity with a concern about this temporary final rule, contact LT Christopher Norton, Marine Safety Unit Baton Rouge, at (225) 298-5400 or Christopher.R.Norton@uscg.mil.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person

listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3 (a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone as a result of elevated water levels on the Lower Mississippi River at mile marker 219 to mile marker 229 in the vicinity of Port Allen Lock. This rule is categorically excluded from further review under paragraph 34(g) of figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

Part 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0376 to read as follows:

§ 165.T08-0376 Safety Zone; Lower Mississippi River, Mile Marker 219 to Mile Marker 229, in the vicinity of Port Allen Lock.

(a) Location. The following area is a safety zone: all waters of the Lower Mississippi River beginning at mile marker 219 and ending at mile marker 229, extending the entire width of the river, in the vicinity of Port Allen Lock.

(b) Effective date. This section is effective from 12 p.m. local on May 5, 2013, until 12 p.m. local on June 16, 2013, unless cancelled earlier by the Captain of the Port, New Orleans.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, commercial towing vessels are prohibited from entering into this safety zone unless operating in compliance with the Captain of the

Port, New Orleans' direction below, or unless specifically authorized by the Captain of the Port, New Orleans or designated representative. The Captain of the Port, New Orleans may be contacted via telephone at (225) 281-4785. A designated representative may include commissioned, warrant, and petty officers of the U.S. Coast Guard on scene within the safety zone area.

(2) Commercial towing vessels requiring entry into or passage through this safety zone must comply with the Captain of the Port, New Orleans' following directions: Canal towing companies and tow operators with tows 600 feet in length or greater, excluding the length of the towing vessel, are required to use private assist vessels with a minimum of 1000 horse power when entering and exiting the Port Allen Locks. Tows exiting the Port Allen Locks intending to head northbound shall initially proceed southbound and then top around at or below mile marker 226 prior to heading north. Additionally, the Captain of the Port, New Orleans is recommending a tonnage restriction of 1 horse power per 5 ton or 280 horse power per regulation barge, while empty barges may be calculated at $\frac{1}{2}$ the horse power requirement.

(3) Commercial towing vessels that are not in compliance with the above direction may request special

authorization from the Captain of the Port, New Orleans to enter or transit through the safety zone. Any vessel granted special authorization must comply with any specific additional restrictions imposed by the Captain of the Port, New Orleans.

(d) Informational Broadcasts. The Captain of the Port, New Orleans or a designated representative will inform the public through broadcast notices to mariners (BNM) of any changes in the effective period or size of the safety zone.

DATED: May 5, 2013

P. W. Gautier,
Captain, U.S. Coast Guard
Captain of the Port New Orleans

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